

**IN THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES**

BETWEEN

**The Registered Trustees of the Socio-Economic Rights
and Accountability Project (SERAP)
(Suing for & on behalf of concerned Nigerians)**

Plaintiffs

-and-

The Federal Republic of Nigeria

Defendant

**AMICUS CURIAE SUBMISSION OF ACCESS NOW, ELECTRONIC FRONTIER
FOUNDATION, AND OPEN NET ASSOCIATION**

I. Introduction

1. This statement is respectfully submitted by the Interveners, together with their application to intervene pursuant to Article 89(1) of this Court's Rules of Procedure. In the event that this Court grants leave to intervene, the Interveners submit that this statement addresses the criteria set out in Article 89(5)(a)-(c) of the Rules of Procedure and invites this Court to admit this statement accordingly.
2. This case raises issues of fundamental importance regarding State interference with the right to freedom of expression, the right to peaceful assembly, the right to access information, as well as social and economic rights in the internet age.
3. The Interveners support, but do not seek to duplicate, the Applicants' arguments, and support the form of order sought by the Applicants.
4. The unprecedented power of the internet to enable millions freely to express opinions, and seek, impart, and receive information, is clear. However, the actions of governments around the world in recent years have shown with equal clarity that the internet has given States unprecedented power to stem the flow of opinions and information by technical means, with immediate effect and in a blanket fashion. Moreover, due to the ongoing

COVID-19 pandemic, people are more dependent on the internet than ever, in every aspect of life, making societies even more vulnerable to internet disruption.¹ This submission sets out, **first**, the wider context of States’ internet disruptions, including blocking or throttling of social media platforms, and the response of the United Nations and the African Commission on Human and Peoples’ Rights, to such activities. **Second**, it lays out the principles to be applied by this Court when considering the lawfulness of such State action. **Third**, it outlines the remedies this Court should provide to those who were harmed by State-ordered internet shutdowns.

II. The United Nations and the African Commission on Human and Peoples’ Rights condemn internet shutdowns.

5. The phrase “internet shutdowns” has been defined as an “intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information.”² Shutdowns range from blocking or throttling of service-specific messaging or social platforms, such as Twitter, to wider blocks of the mobile internet, the broadband internet, or even the internet as a whole. They are also referred to as “blackouts,” “kill switches,” or “network disruptions.”³
6. Access Now and the #KeepItOn coalition track worldwide instances of internet shutdowns. In 2016, there were 75 verified shutdowns, increasing to 106 in 2017, 196 in 2018 and 213 in 2019. In 2020, the number decreased to 155. However, the decrease may be temporary, corresponding to public lockdowns and postponement of elections; meanwhile, the negative impacts of shutdowns have deepened during the COVID-19 pandemic.⁴ While States often insist that they shut down the internet for reasons of combating fake news, hate speech, and related violence; public safety and national security; precautionary measures; and preventing cheating during exams, the reality on the ground shows these shutdowns coincide with elections, protests, and political instability that those governments would like to hide or suppress.⁵
7. In response, the United Nations (UN) and African Commission on Human and Peoples’ Rights (ACHPR) have frequently condemned internet shutdowns, highlighting the critical importance of the internet for exercising fundamental human rights.

¹ See Organisation for Economic Co-operation and Development (OECD), Keeping the Internet up and running in times of crisis (4 May 2020), <https://www.oecd.org/coronavirus/policy-responses/keeping-the-internet-up-and-running-in-times-of-crisis-4017c4c9/>. “Since the start of the COVID-19 crisis, demand for broadband communication services has soared, with some operators experiencing as much as a 60% increase in Internet traffic compared to before the crisis.”

² Access Now, #KeepItOn: Frequently Asked Questions, <https://www.accessnow.org/keepiton-faq/>.

³ *Id.*

⁴ Access Now, Shattered Dreams and Lost Opportunities, A year in the fight to #KeepItOn (March 2021), https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf.

⁵ *Id.*

a) The UN

8. As early as May 2011, Frank La Rue, the former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, provided a framework to analyze the human rights implications of States' disruption of the internet. La Rue lamented "ways in which States are increasingly censoring information online," including through "arbitrary blocking or filtering of content; criminalization of legitimate expression; [and] disconnecting users from Internet access [.]"⁶
9. In his report, La Rue characterized the internet as "one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information and for facilitating active citizen participation in building democratic societies,"⁷ and therefore "a key means by which individuals can exercise their right to freedom of opinion and expression."⁸ Also, La Rue stated that the internet is an "enabler" of other rights such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications.⁹
10. La Rue added that any restriction to the right to freedom of expression, including restrictions on freedom of expression on the internet, must meet the strict criteria under international human rights law: (i) it must be provided by law, which is clear and accessible to everyone (principle of legality); (ii) it must pursue a legitimate aim (principle of legitimacy); and (iii) it must be proven as strictly necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality)¹⁰ (collectively, "the three-part test"). However, according to La Rue, "in many instances, States restrict, control, manipulate and censor content disseminated via the Internet without any legal basis, or on the basis of broad and ambiguous laws, without justifying the purpose of such actions; and/or in a manner that is clearly unnecessary and/or disproportionate to achieving the intended aim."¹¹ Consequently, "such actions are clearly incompatible with States' obligations under international human rights law."¹²
11. This analysis and concern about the States' disruption of the internet have been increasingly reconfirmed by the UN and other multilateral organizations on many occasions.
12. One month after Frank La Rue's report was published, the 2011 Joint Declaration on Freedom of Expression and the Internet issued by UN and regional experts in the field of freedom of expression reconfirmed, "[c]utting off access to the Internet, or parts of the

⁶ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/17/27 (16 May 2011), <https://undocs.org/en/A/HRC/17/27>.

⁷ *Id.*, para. 2.

⁸ *Id.*, para. 20.

⁹ *Id.*, para. 22.

¹⁰ *Id.*, para. 24.

¹¹ *Id.*, para. 31.

¹² *Id.*

Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds.”¹³

13. In the 2015 Joint Declaration, the UN and regional experts in the field of freedom of expression reconfirmed the unlawfulness of the internet shutdowns by stating that “[f]iltering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) [...] are measures which can never be justified under human rights law.”¹⁴
14. In July 2016, the UN Human Rights Council, in its consensus resolution on the promotion, protection and enjoyment of human rights on the Internet, called on all States to refrain from and cease measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law.¹⁵
15. In September 2016, the former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, reconfirmed that internet shutdowns “are generally disproportionate, as “for even if they are premised on national security or public order, they tend to block the communications of often millions of individuals.”¹⁶

¹³ The UN Special Rapporteur on freedom of opinion and expression, the organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on freedom of expression, and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on freedom of expression and access to information (1 June 2011), para. 6(b), <https://www.osce.org/files/f/documents/e/9/78309.pdf>. The 2001 Joint Declaration stated that the right to freedom of expression applies to the internet, just as it does to other communication media. The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on freedom of expression (19 November 2001), <https://www.osce.org/files/f/documents/2/0/40053.pdf>.

¹⁴ The UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on freedom of expression and the ACHPR Special Rapporteur on freedom of expression and access to information (4 May 2015), para. 4(c), <https://www.osce.org/files/f/documents/a/0/154846.pdf>. The 2011 and 2015 Joint Declarations were reconfirmed in the Joint Declaration in 2016 and 2018. Further, the 2019 and 2020 Joint Declaration deplored specifically internet shutdowns and required that “[o]ver the coming years, States and other actors should [...] [r]efrain from imposing Internet or telecommunications network disruptions and shutdowns.” For the 2020 Joint Declaration, *see* https://www.osce.org/files/f/documents/9/8/451150_0.pdf.

¹⁵ UN General Assembly, Human Rights Council, The promotion, protection and enjoyment of human rights on the Internet (27 June 2016), UN Doc. A/HRC/32/L.20, para. 10, <https://undocs.org/A/HRC/32/L.20> (“Internet Resolution”). Recalled by the UN General Assembly, Human Rights Council, The promotion, protection and enjoyment of human rights on the Internet (17 July 2018), A/HRC/RES/38/7, <https://undocs.org/A/HRC/RES/38/7>. Also, another 2018 Human Rights Council resolution expressed concern “about the emerging trend of [...] undue restrictions preventing Internet users from having access to or disseminating information at key political moments, with an impact on the ability to organize and conduct assemblies[.]” UN General Assembly, Human Rights Council, The promotion and protection of human rights in the context of peaceful protests (16 July 2018), UN Doc. A/HRC/RES/38/11, <https://undocs.org/A/HRC/RES/38/11>. This resolution was recalled by a 2020 Human Rights Council resolution. UN General Assembly, Human Rights Council, The promotion and protection of human rights in the context of peaceful protests (13 July 2020), UN Doc. A/HRC/44/L.11, <https://undocs.org/en/A/HRC/44/L.11>.

¹⁶ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (6 September 2016), UN Doc. A/71/373, para. 21, <https://undocs.org/en/A/71/373>.

16. In 2018, the UN General Assembly in its resolution on the promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association called upon “all States to ensure that the same rights that individuals have offline, including the rights to freedom of expression [...] are also fully protected online, in accordance with human rights law, particularly by refraining from Internet shutdowns and content restrictions on the Internet that violate international human rights law.”¹⁷ Accordingly, the UN Secretary General also confirmed in May 2020 that blanket internet shutdowns and generic blocking and filtering of services are considered by the UN human rights mechanisms to be in violation of international human rights law.¹⁸
17. In May 2019, the UN Special Rapporteur on the right to peaceful assembly and association, Clément Nyaletsossi Voule, in his annual report to the Human Rights Council, characterized the digital technologies “both as tools through which these rights can be exercised ‘offline’ and as spaces where individuals can actively form online assemblies and associations.”¹⁹ He expressed concern that “[g]overnments are ordering Internet shutdowns more frequently [...] ahead of critical democratic moments such as elections and protests.”²⁰ He added that “network shutdowns are in clear violation of international law and cannot be justified in any circumstances,” and called for “repealing and amending any laws and policies that allow network disruptions and shutdowns, and refraining from adopting such laws and policies.”²¹
18. In response to the ongoing COVID-19 pandemic, multiple UN bodies are even more urgently calling on States to refrain from internet shutdowns, since the pandemic made people more dependent on the internet in their daily lives.
19. Thus, in April 2020, the UN High Commissioner for Human Rights Michelle Bachelet called on states to end “any blanket Internet and telecommunication shutdowns and denials of service” during the pandemic.²²
20. Similarly, the UN Human Rights Council, in its July 2020 Resolution on the promotion and protection of human rights in the context of peaceful protests, calls on States to

¹⁷ UN General Assembly, Resolution on promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association (8 January 2019), UN Doc. A/RES/73/173, para. 4, <https://undocs.org/en/A/RES/73/173>.

¹⁸ UN General Assembly, Road map for digital cooperation: implementation of the recommendations of the High-level Panel on Digital Cooperation (May 29, 2020), UN Doc. A/74/821, para. 41, <https://undocs.org/A/74/821>.

¹⁹ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, (17 May 2019), UN Doc. A/HRC/41/41, para. 21, <https://undocs.org/A/HRC/41/41>.

²⁰ *Id.*, para. 3.

²¹ *Id.*, para. 73.

²² UN High Commissioner for Human Rights, COVID is “a colossal test of leadership” requiring coordinated action, High Commissioner tells Human Rights Council (9 April 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25785&LangID=E>.

refrain from internet shutdowns and blocking of online services, especially in the context of the global COVID-19 pandemic “when physical assemblies are restricted.”²³

21. The former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, in his final report to the Human Rights Council, emphasized that internet shutdowns interfere with not only the freedom of expressions but other fundamental rights by risking the health and life of everyone who is denied access to the internet, which is “a critical element of health-care policy and practice, public information and even the right to life.”²⁴
22. In addition, the Special Rapporteur on the rights to freedoms of peaceful assembly and of association Clément Voule called for, among ten principles for the government under the pandemic, guaranteeing freedom of association and assembly online, and refraining from restrictions such as internet shutdowns or online censorship.²⁵ More recently, in an addendum report to the Human Rights Council dedicated to internet shutdowns titled “Ending Internet shutdowns: a path forward,” Voule has stressed that “[d]espite several calls to States to end or refrain from imposing internet shutdowns during the pandemic, many shutdowns continued to take place, effectively impeding people’s ability to access essential services necessary for education, work, health, and social connection, and thereby causing increased anxiety and fear.”²⁶

b) ACHPR

23. ACHPR has spoken out against internet shutdowns. For example, in 2016, the Commission expressed its concern over “the emerging practice of State Parties of interrupting or limiting access to telecommunication services such as the Internet, social media and messaging services” and called on states “to respect and take legislative and other measures to guarantee, respect and protect citizen’s right to freedom of information and expression through access to Internet services.”²⁷
24. In its Declaration of Principles on Freedom of Expression and Access to Information in Africa, adopted in 2019, the African Commission also declared the internet as “central to the enjoyment of other rights” and urged States not to “engage in or condone any

²³ UN General Assembly, Human Rights Council Resolution 44/20 The promotion and protection of human rights in the context of peaceful protests (17 July 2020), UN Doc. A/HRC/RES/44/20, para. 12, <https://undocs.org/en/A/HRC/RES/44/20>.

²⁴ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (23 April 2020), UN Doc. A/HRC/44/49, para. 24, <https://undocs.org/A/HRC/44/49>.

²⁵ UN Special Rapporteur on the right to peaceful assembly and association, States responses to Covid 19 threat should not halt freedoms of assembly and association (14 April 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>.

²⁶ UN General Assembly, Human Rights Council, Report of the UN Special Rapporteur on the right to peaceful assembly and association, Addendum, (15 June 2021), UN Doc. A/HRC/47/24/Add.2, paras. 16, 19, <https://undocs.org/A/HRC/47/24/Add.2>.

²⁷ African Commission on Human and Peoples’ Rights, 362 Resolution on the Right to Freedom of Information and Expression on the Internet in Africa - ACHPR/Res. 362(LIX) 2016 (4 November 2016), <https://www.achpr.org/sessions/resolutions?id=374>.

disruption of access to the internet and other digital technologies for segments of the public or an entire population.”²⁸

25. Most recently, in its 2020 Resolution on Human and Peoples’ Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts, the Commission urged the State Parties to guarantee “[a]ccess to the internet and social media platforms as both sources of information and important medium of communication in an era of social distancing, and to facilitate access to information on prevention measures, by ensuring that the internet including social media and other digital communications platforms, remain open, accessible and secure at all times.”²⁹ It also called on States not to impose any “full or partial blocking of media outlets without due process of the law and for clearly and objectively established grounds laid down in laws that are in accord with freedom of expression and media and internet access without interruption.”³⁰

III. State-ordered internet shutdowns violate domestic, regional, and international law.

26. The Interveners submit that the relevant legal instruments that should be applied to the present case are the Constitution of the Federal Republic of Nigeria 1999 (Nigerian Constitution), the African Charter on Human and Peoples' Rights (African Charter), the International Covenant on Civil and Political Rights (ICCPR),³¹ and the International Covenant on Economic Social and Cultural Rights (ICESCR).³² Nigeria ratified the African Charter on June 22, 1983 and ICCPR and ICESCR on 29 July 1993, and is therefore bound by these treaties.

- a. Violation of civil and political rights.

Right to freedom of opinion and expression

27. The Nigerian Constitution’s Article 39 guarantees “freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.”³³ Similarly, Article 9 of the African Charter states that “[e]very individual

²⁸ African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019), Preamble, Principle 38, Principle 38, para. 2, https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf.

²⁹ African Commission on Human and Peoples’ Rights, 449 Resolution on Human and Peoples’ Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts, (7 August 2020), ACHPR/Res. 449 (LXVI) 2020, para. 7(b), <https://www.achpr.org/sessions/resolutions?id=480>.

³⁰ *Id.*, para. 7(e).

³¹ UN General Assembly, International Covenant on Civil and Political Rights (16 December 1966), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

³² UN General Assembly, International Covenant on Economic, Social and Cultural Rights (3 January 1976), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>.

³³ Constitution of the Federal Republic of Nigeria 1999, Article 39, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

shall have the right to receive information” and “shall have the right to express and disseminate his opinions within the law.”³⁴

28. These provisions are consistent with the Article 19 of ICCPR which guarantees the right to freedom of opinion and expression, which includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.”³⁵
29. The UN Human Rights Committee’s General Comment No. 34 on Article 19 ICCPR clarifies that ICCPR Article 19 “protects all forms of expression and the means of their dissemination [...], includ[ing] [...] internet-based modes of expression.”³⁶ Once an individual has shown the existence of a restriction on freedom of expression, the burden falls on the State to demonstrate that it passes the three-part test.³⁷
30. Most importantly, General Comment No. 34 emphasizes that State authorities “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”³⁸ Further, “[restrictions] must be the least intrusive instrument amongst those which might achieve [State interests].”³⁹
31. Specifically, the Committee states that: “[p]ermissible restrictions generally should be content-specific,” therefore “generic bans on the operation of certain sites and systems are not compatible with paragraph 3 [of Article 19].”⁴⁰ Also, it is inconsistent with Article 19 “to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.”⁴¹
32. These strict standards have been applied by several domestic and regional courts in internet shutdown cases. For example, in the 2020 Jammu and Kashmir shutdown case *Anuradha Bhasin v. Union of India*, the Indian Supreme Court set out similar requirements, by ruling that when ordering internet restrictions, the State must define the legitimate goal, assess the existence of any alternative mechanism in furtherance of the goal, and resort to only the least restrictive measure.⁴²

³⁴ African Commission on Human and Peoples’ Rights, African Charter on Human and Peoples’ Rights (21 October 1986), Article 9, <https://www.achpr.org/legalinstruments/detail?id=49>.

³⁵ UN General Assembly, International Covenant on Civil and Political Rights (16 December 1966), Article 19, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

³⁶ UN General Assembly, Human Rights Committee, General Comment No. 34, Article 19, Freedoms of Opinion and Expression (12 September 2011), UN Doc. CCPR/C/GC/34, para. 12, <https://undocs.org/CCPR/C/GC/34>.

³⁷ *Id.*, para. 22, 27.

³⁸ *Id.*, para. 35.

³⁹ *Id.*, para. 34.

⁴⁰ *Id.*, para. 43.

⁴¹ *Id.*

⁴² *Anuradha Bhasin v. Union of India*, Indian Supreme Court, Writ Petition No. 1031 of 2019 (10 January 2020), para. 70, <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/02/AB-v.-Union-of-India-Full-Judgment>.

33. Similarly, in 2020, in Indonesia, the State Administrative Court of Jakarta required three factors which are substantially the same as the three-part test,⁴³ and held that the internet shutdowns at issue did not meet the standards for legality⁴⁴ and necessity and proportionality, and therefore the internet shutdowns were unconstitutional.⁴⁵
34. Also in 2020, this Court concluded that the 2017 internet shutdowns in Togo were unlawful because “any interference with [the right to internet access] has to be provided for by the law specifying the grounds for such interference,” and the internet shutdowns lacked such legality.⁴⁶ The court refused to accept the government of Togo’s assertion that it acted on national security grounds.⁴⁷

Right to peaceful assembly and association

35. Article 40 of the Nigerian Constitution states that “[e]very person shall be entitled to assemble freely and associate with other persons.”⁴⁸ Similarly, Article 11 of the African Charter guarantees to every individual “the right to assemble freely with others,” which “shall be subject only to necessary restrictions provided for by law.”⁴⁹
36. Article 21 of ICCPR states that “[t]he right of peaceful assembly shall be recognized.”⁵⁰ The General Comment No. 37 on Article 21 of the ICCPR clarifies that it protects peaceful assemblies “wherever they take place,” whether online or offline or a combination thereof.⁵¹ It also clarifies that the States’ obligation extends to participants’ or organizers’ associated activities such as “mobilization of resources; planning; dissemination of information about an upcoming event; preparation for and travelling to

[pdf](#). An editor of a newspaper company sued the Indian government, claiming that internet shutdowns which were imposed in the Jammu and Kashmir region in India on 4 August 2019 in the name of protecting public order were unlawful.

⁴³ *Aliansi Jurnalis Independen (AJI) and Pembela Kebebasan Berekspresi Asia Tenggara (SAFEnet) v. The Ministry of Communication and Information (Kominfo) and The President of the Republic of Indonesia*, 230/G/TF/2019/PTUN-JKT (3 June 2020), p. 249. The Alliance of Independent Journalists (AJI) and Southeast Asia Freedom of Expression Network (SAFEnet) sued the Indonesian government, claiming that the internet shutdowns in Papua and West Papua provinces from 14 August 2019 to 9 September 2019 under the name of security and public order were unconstitutional.

⁴⁴ *Id.*, pp. 252-271.

⁴⁵ *Id.*, pp. 261-274.

⁴⁶ *Amnesty International Togo and Ors v. The Togolese Republic*, ECW/CCJ/JUD/09/20 (25 June 2020), para. 38, <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/07/JUD-ECW-CCJ-JUD-09-20-AMNETY-INTERNATIONAL-TOGO-7-ORS-V.-REPUBLIC-OF-TOGO-of-6-july-2020.pdf>. Togolese NGOs and journalists sued the government, claiming that the internet shutdowns in Togo during protests that broke out in September 2017 were unlawful, despite government claims that the measures pursued national security interests.

⁴⁷ *Id.*, para. 45.

⁴⁸ Constitution of the Federal Republic of Nigeria 1999, Article 40, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

⁴⁹ African Commission on Human and Peoples’ Rights, African Charter on Human and Peoples’ Rights (21 October 1986), Article 11, <https://www.achpr.org/legalinstruments/detail?id=49>.

⁵⁰ UN General Assembly, International Covenant on Civil and Political Rights (16 December 1966), Article 21, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁵¹ UN General Assembly, Human Rights Committee, General Comment No. 37, Article 21, Freedoms of Opinion and Expression (17 September 2020), UN Doc. CCPR/C/GC/37, para. 6, <https://undocs.org/CCPR/C/GC/37>.

the event; communication between participants leading up to and during the assembly; broadcasting of or from the assembly; and leaving the assembly afterwards.”⁵² Internet shutdowns, including blocking of social media services such as Twitter, which are often used to facilitate all of these activities, hinder online protests in a blanket manner, and are prohibited under Article 21.

37. Article 21 is also interpreted as requiring the three-part test to justify a restriction. General Comment No. 37 sets a strict standard that is equivalent to Article 19 by requiring that, “[r]estrictions must be necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient.”⁵³ These restrictions “must also be the least intrusive among the measures that might serve the relevant protective function.”⁵⁴

b. Violation of economic, social, and cultural rights

38. The internet is becoming increasingly essential to fundamental societal systems, including business, banking, health, education, public administration, and social and cultural life. Thus, internet shutdowns affect not only political and civil rights, such as the rights to free expression, access to information, and peaceful assembly, but also economic, social, and cultural rights.
39. Both the Nigerian Constitution and the African Charter on Human and Peoples’ Rights contain provisions addressing such rights, including the right to work,⁵⁵ health,⁵⁶ and culture and science.⁵⁷
40. Unlike ICCPR, which imposes immediate obligation on States, Article 2(1) of ICESCR requires States “to take steps [...] to the maximum of [their] available resources, with a view to achieving progressively the full realization of the rights,”⁵⁸ because, according to General Comment No. 3, “full realization of all economic, social and cultural rights will

⁵² *Id.*, para. 33.

⁵³ *Id.*, para. 40.

⁵⁴ *Id.*

⁵⁵ Constitution of the Federal Republic of Nigeria 1999, Article 17(3)(a)-(b), <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>; African Commission on Human and Peoples’ Rights, African Charter on Human and Peoples’ Rights (21 October 1986), Article 15, <https://www.achpr.org/legalinstruments/detail?id=49>.

⁵⁶ Constitution of the Federal Republic of Nigeria 1999, Article 17(3)(c)-(d), <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>; African Commission on Human and Peoples’ Rights, African Charter on Human and Peoples’ Rights (21 October 1986), Article 16, <https://www.achpr.org/legalinstruments/detail?id=49>.

⁵⁷ Constitution of the Federal Republic of Nigeria 1999, Articles 17(3)(b), 18(2), <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>; African Commission on Human and Peoples’ Rights, African Charter on Human and Peoples’ Rights (21 October 1986), Article 22, <https://www.achpr.org/legalinstruments/detail?id=49>.

⁵⁸ UN General Assembly, International Covenant on Economic, Social and Cultural Rights (3 January 1976), Article 2(1), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

generally not be able to be achieved in a short period of time.”⁵⁹ However, the General Comments No. 3 and No. 25 together set out that any deliberately retrogressive measures would require the most careful consideration and would need to be fully justified by “strictly examining the necessity and proportionality of such measures, including whether alternatives were comprehensively examined and whether the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected.”⁶⁰ There is a strong presumption of impermissibility of any retrogressive measures taken in relation to rights outlined in ICESCR.⁶¹

41. Unlike a decision to omit or delay investment in internet infrastructure, for example, the imposition of internet shutdowns deprive people of internet connectivity that is already functional and improves their lives. This is a deliberately retrogressive measure, which triggers the strong assumption of impermissibility. Further, the Court should consider individuals’ higher dependency on the internet under the ongoing COVID-19 pandemic, which deepened and widened the negative impact on social and economic rights caused by internet shutdowns.⁶²

Right to work

42. Article 17(3)(a)-(b) of the Nigerian Constitution and Article 15 of the African Charter address the right to work.⁶³ Article 6 of ICESCR also protects the right to work, including the right to the opportunity to gain living by work which an individual freely chooses, and requires States to take appropriate steps to safeguard this right.⁶⁴
43. The internet has long been an important infrastructure to secure employment, and with the restriction on travel and in-person communication under the COVID-19 pandemic, the internet became an indispensable condition to guarantee the right to work. Remote communication systems, including social media and messaging apps, became a lifeline for every aspect of the operation in every business sector, including internal communication, sales, receiving order, purchasing, and communication with partners and clients.⁶⁵ Internet shutdowns infringe on the right to work by depriving affected people of

⁵⁹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3, Article 2, para. 1, The nature of States parties’ obligations (14 December 1990), UN Doc. E/1991/23, para. 9,

<https://www.refworld.org/pdfid/4538838e10.pdf>.

⁶⁰ *Id.*, UN Committee on Economic, Social and Cultural Rights, General Comment No. 25, Articles 15 (1)(b), (2), (3), (4) (30 April 2020), UN Doc. E/C.12/GC/25, para. 24, <https://undocs.org/en/E/C.12/GC/25>.

⁶¹ *Id.*

⁶² Access Now, Shattered Dreams and Lost Opportunities, A year in the fight to #KeepItOn (March 2021), https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf.

⁶³ Constitution of the Federal Republic of Nigeria 1999, Article 17(3)(a)-(b), <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>; African Commission on Human and Peoples’ Rights, African Charter on Human and Peoples’ Rights (21 October 1986), Article 15, <https://www.achpr.org/legalinstruments/detail?id=49>.

⁶⁴ UN General Assembly, International Covenant on Economic, Social and Cultural Rights (3 January 1976), Article 6, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

⁶⁵ See United Nations Conference on Trade and Development, COVID-19 has changed online shopping forever, survey shows, UNCTAD/PRESS/PR/2020/029, <https://unctad.org/press-material/covid-19-has-changed-online-shopping-forever-survey-shows>.

opportunities to work,⁶⁶ or otherwise force them to engage in brick-and-mortar work with higher contagion risks.

Right to health

44. Nigerian Constitution, Article 17(3)(c)-(d), and the African Charter, Article 16, protect the right to health. Similarly, Article 12 of ICESCR protects the right to the enjoyment of the highest attainable standard of physical and mental health. States are obliged to, among others, the prevention, treatment and control of epidemic, endemic, occupational, and other diseases.
45. Online social media services, including Twitter, have become an important source of the latest information about the COVID-19 pandemic and the measures taken by States to keep individuals safe. Internet shutdowns infringe on individuals' right to health by cutting off their lifeline to information, help, and support that they need to stay healthy.

Right to science and culture

46. Various provisions of the Nigerian Constitution and the African Charter address the right to culture and science.⁶⁷ Article 15 of ICESCR also protects the right to take part in cultural life and the right to enjoy the benefits of scientific progress.
47. In the modern era, the most convenient and economical mechanism for access to cultural products (literature, news content, popular entertainment, etc.) and scientific progress and its applications (scientific studies and medical data, computer coding and web development resources and repositories, open source data for experimentation purposes) is provided by the internet, including through social media, such as Twitter.⁶⁸ Internet shutdowns infringe on the right to science and culture by depriving people affected of opportunities to access cultural products and benefit from scientific progress and its applications.
48. Further, General Comment No. 25 clarifies that Article 15 imposes an immediate obligation on States to respect the right to science, including to refrain from interfering directly or indirectly in the enjoyment of this right. This obligation includes, among others, “eliminating censorship or arbitrary limitations on access to the Internet, which undermines access to and dissemination of scientific knowledge.”⁶⁹ Such conduct can be

⁶⁶ See Reuters, FEATURE-No web, no jobs: Kashmiris board the 'Internet Express' (12 January 2020), <https://www.reuters.com/article/india-kashmir-internet-idUSL8N29710E>.

⁶⁷ Constitution of the Federal Republic of Nigeria 1999, Articles 17(3)(b), 18(2), <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>; African Commission on Human and Peoples' Rights, African Charter on Human and Peoples' Rights (21 October 1986), Article 22, <https://www.achpr.org/legalinstruments/detail?id=49>.

⁶⁸ UN General Assembly, Human Rights Council, Report of the Special Rapporteur in the field of cultural rights, “The right to enjoy the benefits of scientific progress and its applications” (14 May 2012), UN Doc. A/HRC/20/26, para. 36, <https://undocs.org/en/A/HRC/20/26>.

⁶⁹ UN General Assembly, Human Rights Council, Committee on Economic, Social and Cultural Rights, General Comment No. 25, Article 15 (1) (b), (2), (3) and (4) (30 April 2020), UN Doc. E/C.12/GC/25, para. 42, <https://undocs.org/en/E/C.12/GC/25>.

justified only in accordance with the three-part test⁷⁰ as the then UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, also reiterated in his 2020 report.⁷¹ In that report, he also emphasized the importance of the right of everyone to enjoy the benefits of scientific progress and its applications under the COVID-19 pandemic.⁷²

V. The Court should provide remedies to those harmed by the Nigerian State's shutdown of Twitter

49. Article 2(3)(a) of ICCPR explicitly requires States to provide effective remedies for violations of its enumerated rights.⁷³ Therefore, first, the Court should provide remedy to the individuals in Nigeria affected by the blocking of Twitter by declaring that the State actions at issue are unlawful, permanently enjoining the State from blocking orders and prosecution of Twitter users, and ordering the State to provide compensation and other appropriate redress.
50. Second, as in the case of *Amnesty International Togo and Ors v. The Togolese Republic*, the Court should order the Nigerian government to take all the necessary measures, including enacting and implementing laws, regulations, and safeguards in order to meet its obligations to respect the right of freedom of expression and other rights in accordance with international law.⁷⁴ These measures may include (i) disclosure of material information of any internet restrictions, e.g., the purpose, scope, and duration,⁷⁵ and (ii) a post-audit mechanism and public disclosure of the audit result by an independent oversight board to confirm any internet restrictions are implemented in compliance with human rights.⁷⁶

VI. Conclusion

51. For the reasons set out above, the Interveners support, in its entirety, the form of order sought by the Applicants.

⁷⁰ *Id.*, para. 21.

⁷¹ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (23 April 2020), UN Doc. A/HRC/44/49, paras. 12-13, <https://undocs.org/A/HRC/44/49>.

⁷² *Id.*

⁷³ UN General Assembly, International Covenant on Civil and Political Rights (16 December 1966), Article 2(3)(a), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁷⁴ See *Amnesty International Togo and Ors v. The Togolese Republic*, ECW/CCJ/JUD/09/20 (25 June 2020), para. 47, iv, <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/07/JUD-ECW-CCJ-JUD-09-20-AMNES-INTERNATIONAL-TOGO-7-ORS-V-REPUBLIC-OF-TOGO-of-6-july-2020.pdf>

⁷⁵ See *Anuradha Bhasin v. Union of India, Indian Supreme Court*, Writ Petition No. 1031 of 2019 (January 10, 2020), para. 152(a), <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/02/AB-v.-Union-of-India-Full-Judgment.pdf>.

⁷⁶ *Id.*, para. 152(f).